See 1 REMINGTON, BANKRUPTCY, 2 ed., § 44; 1 LOVELAND, BANKRUPTCY, 4 ed., § 157. This would also be true of a voluntary petition in bankruptcy. See 1 LOVELAND, BANKRUPTCY, 4 ed., § 158. *Cf. Bell* v. *Blessing*, 225 Fed. 750 (9th Circ.). As the charter provision in the principal case is evidently intended to limit the directors only when their act might be adverse to the interests of the stockholders, it should be construed as permitting them to make an assignment for the benefit of creditors when the corporation is insolvent. So the decision seems correct. See *Fitts* v. *Custer Slide Mining Co.*, 266 Fed. 864 (8th Circ.).

CORPORATIONS — DISTINCTION BETWEEN CORPORATION AND ITS MEMBERS — DISREGARDING THE CORPORATE FICTION WHERE NO ILLEGALITY IS INVOLVED. — The B corporation owed the A corporation upon a contract. X, the sole stockholder of the A corporation, was personally indebted to the B corporation, this debt being secured by A corporation stock. At maturity, X failed to pay, and the A corporation directed the B corporation to deduct from its contract debt to A the amount due to B from X. The B corporation refused. On a foreclosure sale it bought in the stock pledged by X as security, and now sues in equity as stockholder of the A corporation. *Held*, that the conduct of the B corporation was so inequitable as to preclude its suing in equity as stockholder. *United States Gypsum Co.* v. *Mackey Wall Plaster Co.*, 199 Pac. 249 (Mont.).

The language of the court is flavored with ready willingness to disregard the corporate fiction. It is intimated that X's obligation is such as might be set off by the B corporation in a contract action by the A corporation. See *Guy* v. *Hudson River Electric Power Co.*, 187 Fed. 12, 15. *Contra*, *Gallagher* v. *Germania Brewing Co.*, 53 Minn. 214, 54 N. W. 1115; *New York Ice Co.* v. *Parker*, 21 How. Pr. (N. Y. Super.) 302. And the refusal of the B corporation to deduct X's individual debt from its indebtedness to the A corporation is thought inequitable because, the A corporation and X being identical, the creditor has harshly chosen to sacrifice his debtor's collateral rather than receive full payment. In this case, as has been noticed in many others, the just result is attainable without violating the corporate conception. See 17 HARV. L. REV. 201; 27 HARV. L. REV. 386; 30 HARV. L. REV. 762; 31 HARV. L. REV. 894. When the corporation sought to have X's individual indebtedness deducted, in effect it directed its debtor to pay in part to X. Payment to the creditor's order is payment to the creditor. Since there was no question of impairing the corporate margin of safety by this transfer of assets to a stockholder, the B corporation could have reduced its indebtedness to the A corporation by doing as directed; and its choice of the harsher alternative was inequitable.

CORPORATIONS — RECEIVERS — JURISDICTION OF EQUITY TO APPOINT A RECEIVER OF A SOLVENT PRIVATE CORPORATION WHERE NO OTHER RELIEF IS SOUGHT. — The plaintiff was a shareholder and director of the defendant corporation. The shareholders were deadlocked and the majority of the board of directors were conducting the business with a view to driving the plaintiff out of it and diverting the assets to their own use. Relief by ordinary means was impossible. The plaintiff brought a bill for a temporary receivership. *Held*, that a receiver be appointed. *Schick* v. *Hood*, 30 Dist. Rep. 584 (Pa.), 78 Leg. Intel. 557.

There is no such thing as a substantive right to a receivership; courts are not agencies for running private enterprises. *Mabon* v. *Ongley Electric Co.*, 156 N. Y. 196, 50 N. E. 805. A receivership is a remedy. See 1 CLARK, RECEIVERS, § 238. It is usually ancillary to other relief sought by the bill. See, *e. g.*, *Aiken* v. *Colorado River Co.*, 72 Fed. 591 (9th Circ.). But there seems to be no reason why it may not be granted as the sole remedy, if the plain-

tiff has substantive grounds for relief. Being an extreme remedy it should be granted against a solvent private corporation only as a last resort. *Merrifield* v. *Burrows*, 153 Ill. App. 523. It should appear that more restricted remedies are unavailable or inadequate. *Roman* v. *Woolfolk*, 98 Ala. 219, 13 So. 212; *Kahan* v. *Alaska Junk Co.*, 111 Wash. 39, 189 Pac. 262. A receivership has been denied where the offending officers were solvent and could be brought to an accounting. *Hayes* v. *Jasper Land Co.*, 147 Ala. 340, 41 So. 909. But an accounting covers only past delinquencies, so that where a continuous diversion of assets cannot be checked by injunction, and the offending officers cannot be removed, a temporary receiver may well be appointed. *Boothe* v. *Summit Mining Co.*, 55 Wash. 167, 104 Pac. 207. The matter is within the discretion of the court, with the burden on the plaintiff to overcome the strong objections to the remedy. In the principal case the hardship and impossibility of other relief justify the appointment.

DAMAGES — CONTRACTS. — In 1916 the defendant contracted to build a house for the plaintiff, to be completed within six months. The plaintiff reserved the right to complete the house himself if the defendant did not properly proceed with the work. After work was begun, the government prohibited all building except such as had already been commenced, which was permitted to continue on application for a license. The defendant intentionally delayed the work to insure a refusal of the license. It was refused and the plaintiff brought this action for breach of contract. It was impossible to continue building until 1919, when the plaintiff did so at a greatly increased cost. *Held*, that the plaintiff recover this increased cost, less the contract price. *Mertens* v. *Home Freeholds Co.*, [1921] 2 K. B. 526 (C. A.).

The court unconsciously departs from the rule allowing only such damages for breach of a contract as the parties may fairly be supposed to have contemplated when they made the contract. *Hadley* v. *Baxendale*, 9 Ex. 341; *Bradley* v. *Chicago, etc. Ry. Co.*, 94 Wis. 44, 68 N. W. 410. See *Griffin* v. *Colver*, 16 N. Y. 489, 494–495. See 1 SEDGWICK, DAMAGES, 9 ed., §§ 144–147a. The parties here contemplated that if the plaintiff should avail himself of his right to build, and to hold the defendant for the increased cost, this right would be exercised at the time set for the defendant's performance. That it would become impossible to proceed was clearly not foreseen. Even though the defendant knowingly caused this impossibility, to hold him for more than the cost of building the house in 1916, less the contract price, is to subject him to more damages than were contemplated at the time the contract was made. Damages in actions *ex contractu* differ from those in actions *ex delicto*. The former are based on consensual transactions and the liability of the parties is limited by the extent of the obligations they have undertaken. Actions *ex delicto* do not depend on consensual transactions. The defendant's liability is therefore not limited, but extends to all the damages he has proximately caused. *Shedd* v. *Calumet Construction Co.*, 270 Fed. 942 (7th Circ.).

DEEDS — CONSTRUCTION — LAND "DIVIDED BETWEEN" A AND HIS HEIRS. — A deed provided that land should "revert to and be divided between" A and his heirs. *Held*, that A took a half-interest, and his children a half-interest, as tenants in common. *Shugart* v. *Shugart*, 233 S. W. 303 (Tex. App.).

It is clear that the deed, correctly construed, creates a tenancy in common. To conceive of "dividing" land as separating a fee in that land into life estate and remainder, seems beyond reason. The cases confirm this view, uniformly treating the parts of a "divided" estate as contemporaneous. *Griswold* v. *Johnson*, 5 Conn. 363; *Herring* v. *Rogers*, 30 Ga. 615; *Stanwood* v. *Stanwood*, 179 Mass. 223, 60 N. E. 584; *Pruden* v. *Paxton*, 79 N. C. 446.